**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 654 OF 1999**

1. Jagan Shankar Bhoir, aged 29 years, ]
2. Dhaklya Ram Bhoir, aged 44 years, ]
3. Dilip Savlaram Bhoir, aged 29 years, ]
4. Butya Dhaklya Bhoir, aged 29 years, ]
5. Ramesh Raz Santu Patil, aged 23 years, ]
6. Laxman Shankar Bhoir, aged 24 years, ]

all r/at. Nevalibaon, Tal. Ulhasnagar. ] .. Appellant (Ori. Accused Nos.8, 9, 10, 11, 12 & 17)

Versus

The State of Maharashtra. ]
(at the instance of Hill Line Police Station, ]
Dist. Thane.) ] .. Respondent.

**ALONGWITH**

**CRIMINAL APPEAL NO. 558 OF 1999**

Dinesh Shankar Bhoir, ]
age: 29 years, Occ: ]
R/at Nevaligaon, Tal. Ulhasnagar. ] . Appellant (Ori. Accused 19)

Versus

The State of Maharashtra. ]
(at the instance of Hill Line Police Station, ]
Dist. Thane.) ] .. Respondent.

Mr. A.Y. Patki, Advocate for the appellants/accused in both the Appeals.

Mrs. P.H. Kantharia & Mrs. U.V. Kejriwal, A.P.Ps., for the respondent/State in both the Appeals.

**CORAM: V.G. PALSHIKAR &**
**ANOOP V. MOHTA, JJ.**

**DATED: 29TH OCTOBER, 2004.**

**COMMON ORAL JUDGMENT:** *[ Per Anoop V. Mohta, J. ]*

1. These two Appeals are directed against the judgment and order in Sessions Case No. 1174 of 1996, passed by the Additional Sessions Judge, Kalyan, whereby the appellants – respective accused, have been convicted for the offence punishable under the provisions of Indian Penal Code and have been sentenced to suffer rigorous imprisonment for life for the offence under Section 302 read with Section 149, and imprisonment for five years for the offence punishable under Section 326 read with Section 149, rigorous imprisonment for one year under Section 147 and 148 of the IPC and for one month under Section 341 read with Section 149 of the Indian Penal Code and have also been awarded fine, including all other consequential orders. Therefore, this Appeal No.654 of 1999 by the appellants-original accused Nos.8, 9, 10, 11, 12 and 17 and Appeal No.

558 of 1999 by the appellant – original accused No.19.

2. There were 24 accused charged for the offences punishable under various Sections of the IPC, as referred above. Except the above appellants,, all the other accused have been acquitted. On 13th March, 1995, PW3 - the complainant Yamunabai Babu Patil, along with her husband and other relatives, had been to village Wasar for bringing newly married daughter-in-law back to their house. They started at about 4.00 p.m, from village Wasar to Newali by a jeep. While coming back to their village Newali, one Jagan Shankar Bhoir, accused No.8, put across his bullock cart in front of their jeep. The complainant's husband viz. Babu Patil, who was driving, therefore halted the jeep. Suddenly, Laxman Bhoir appellant No.6 /accused No.9, Dilip Sawlaram Bhoir appellant No.3/accused No. 10, Butya Dhaklya Bhoir appellant No.4/accused No.11, Ramesh Raz Santu Patil appellant No.5/accused No.12 and Dinesh Shankar Bhoir appellant/accused No.19, along with others started throwing chilli powder and surrounded and assaulted the deceased Babu Patil with swords, knives and *guptis*. The complainant and her sister-in-law intervened. They were also injured on their hands. The appellants then

ran away. The complainant and the other injured were taken to the Police Station and thereafter, to the Central Hospital, Ulhasnagar. The complaint was recorded by PSI Bagwe in the hospital. The offence was accordingly registered. The Police Officer PW20 – Shri Pandit Ramchandra Patne proceeded to the spot. It was between two villages Bhalgaon and Wasargaon. The Inquest Panchanama of the dead body was drawn. Various materials were seized and attached from the spot under the Spot Panchanama. The blood samples of Bhagubai and Yamunabai were also collected. The sword, which was thrusted in the abdomen of the deceased, was also removed out on the same day. On 14/3/95 the blood stained clothes of the accused were attached by PI Patne. On 15th March, 1995, the bullock cart was also attached. On 17th March, 1995, the weapons were also attached at the instance of the accused Dilip Bhoir. On 18th March, 1995, PI Patne attached four swords at the instance of the accused Dhaklya. On 19th March, 1995, the clothes worn by Yamunabai and Bhagubai were also attached. On 19th March, 1995, accused Dilip Bhoir was arrested. On 20th March, 1995, Pandharinath and Shantaram were arrested. On 22nd March, 1995, the axe, at the instance of the accused Laxman, was recovered. Accused Suresh and Bharat were

arrested on 24th March, 1995. The accused Balya, Motiram and Dhanji were arrested on 28th March, 1995. Accused Prakash was arrested on 30th March, 1995, and accused Ashok was arrested on 31st March, 1995. One Arun Patil was arrested on 1st April, 1995. The blood samples were sent to the Chemical Analyzer for chemical analysis. The matter was investigated and, after collecting the information and the material, all the accused were charge sheeted. All of them pleaded not guilty. They totally denied the charges and contended that the deceased was assaulted by unknown persons when he had got down from the jeep for easing himself behind the tree. Based on 20 witnesses and various documents on the record, the learned Sessions Judge has passed the impugned order and convicted the appellants, as stated above. Therefore, this Appeal.

3. We have heard the learned counsel for the appellants and the A.P.P. for the respondent/State. We have been taken through the testimonies of all the witnesses and the record of the case. After re-appreciating the testimonies and the material placed on the record and, after considering the submissions made by the respective parties, we are of the view that the impugned judgment and the order needs no interference. The impugned Judgement order is confirmed, except against

original accused No.19 – Dinesh Shankar Bhoir the appellant in Appeal No. 558 of 1999.

4. There is no substantial dispute or challenge about the homicidal death of the deceased Babu Patil. The medical evidence, is supported by PW19 – Dr. Harishchandra Namdeo Paradhi and PW14 – Dr. Anil Madhukar Moghe. The deceased Babu was murdered by various instruments/weapons in question used by the accused. PW19 – Dr. Paradhi had also examined injured witnesses Bhagubhai and Yamumabai on 13th March, 1995, at 6.20 p.m. The Medical Officer PW-19 had examined the deceased Babu Patil on 13th March, 1995, from 10.10 p.m. to 10.15 p.m. and noted 18 external and 5 internal injuries. The cause of death, according to his opinion, was shock due to multiple incised and penetrating injuries to the brain, following fracture of the skull, and multiple injuries to the spine, as recorded in the Post Mortem Report (Exhibit-111). Dr. Anil Moghe had also examined Bhagubai and Yamunabai on 14th March, 1995, and noted the external injuries.

5. PW3 - Yamunabai Babu Patil, the wife of the deceased and the complainant, who was injured, as noted above, has supported the prosecution story, including the involvement of the accused/appellants.

Her evidence was also supported by the other witness PW9 – Bhim Babu Patil, the son of the deceased, who was also in the said jeep when the deceased was assaulted. Another corroborating witness/evidence is PW11 - Janabai Lahu Patil. This witness has also supported that all of them were proceeding to Newaligaon in the jeep at about 4.00 p.m. The deceased had halted the jeep after seeing one bullock cart across the road. This witness has also identified the accused. This witness has also deposed that Dinesh was addressing the crowd and/or gang to assault the deceased. All these witnesses have named the respective appellants-accused, who were assaulting the deceased by swords and *guptis*. These witnesses have also corroborated the injuries caused to the other injured witnesses, including the complainant. The throwing of chilli powder has also been corroborated by Janabai.

6. PW13 – Bhagubai Jairam Bhoir, the sister of the deceased, has further supported and corroborated the prosecution case, as referred above. She was also injured in the process of saving her brother. This witness has supported that the complainant – wife of the deceased, was also injured. This witness has further linked the event that PW12 - Hanuman Babu Patil, the son of the deceased, took them to the Police

Station and thereafter, to the hospital. All these witnesses, have, denied the suggestion that the deceased was assaulted by someone else when he was easing out near the tree. PW13 has stated that stones were also pelted on the jeep. PW12 - Hanuman, the son of the deceased, came to the lorry and took the injured Yamunabai and Bhagubai to the Hill Line Police Station at about 5.30 p.m., where the Station Diary was recorded at Exhibit-85 by PW16 - PSI Shankar Mohinilal Badve. Some lacunas in recording the statements or treating the First Information Report in question, as contemplated under Section 154 of the Criminal Procedure Code and/or which falls within the ambit of Section 152 of the Criminal Procedure Code, have nowhere affected the basic case of the prosecution.

7. PW12 – Hanuman has also supported the case of the prosecution to the effect that his parents and relatives had gone to Wasargaon to bring his wife on 13th March, 1995 and, at about 4.30 p.m., Janabai came to him and informed about the assault by the gang of Dinesh Bhoir between village Bhalgaon and Wasargaon Road. This witness has also found his mother and aunt in an injured condition. He took his mother and aunt to Hill Line Police Station and thereafter, they were admitted to the Central Hospital. He also admits that there was enmity between his deceased

father and Dinesh.

8. PW1 – Gajanan Kathod Jadhav, a Panch witness to the Inquest Panchanama dated 13th March, 1995, has supported that the dead body of the deceased was in the jeep on the front seat and there were injuries on the hand, back and abdomen of the deceased. This witness has also stated that the *gupti* was lying thrusted in the abdomen of the deceased. The Spot Panchanama was proved by the evidence of PW2 - Harishchandra Ananta Fulore, who has also supported that the dead body was in the jeep. The blood was found on the front and rear seat of the jeep. There were stones behind the jeep. The Police had collected the blood samples and articles. This witness has supported that Yamunabai and Bhagubai were injured. The cumulative effect of the testimonies of these witnesses viz. Yamumabai, Bhim, Bhagubai, Janabai, and in spite of the cross-examination, could not affect the prosecution case. Some discrepancies and/or improvements here or there in the background and circumstances of the case, in no way supports the defence. The presence of these witnesses, even though related to the deceased, cannot be overlooked. These witnesses cannot be said to be chance witnesses. Their testimony, as well as, their conduct appears to be normal and

natural. The testimony of these witnesses basically, when they were also injured in the said assault by the appellants and other accused, definitely supports the prosecution case. Some omission or some contradiction in the statement before the Police and/or in the Court by itself cannot, in the present case, be the reason to disbelieve their corroborated testimonies.

9. Merely because all 22 accused were not named in the FIR or in the first statement given by Yamunabai that itself cannot make the whole testimony or the prosecution story false and/or fabricated. The involvement of the accused-appellants have been clearly recorded, based on the testimonies of these witnesses.

10. We have also noted that the blood stained sarees and blouses of Yamunabai and Bhagubai were duly attached on 19th March, 1995 which is also supported by the Chemical Analyzer's Report. The evidence of PW9 – Bhim, PW11 – Janabai and PW13 – Bhagubai have corroborated that Dilip threw chilli powder in the eyes of the deceased and inflicted the blow by a dagger on his back and the accused Dinesh addressed to assault and the other accused assaulted the deceased by sword and *guptis*. (verify individual roles of the appellants).

11. The Apex Court has held in *Jagdeep Singh Vs. State of Haryana* **AIR**

**1974, S.C., 1978** that merely because the testimony of the injured eye witnesses has not been believed by the Court in regard to some accused, that itself does not mean that such evidence or testimony of such witnesses would be disregarded against the remaining accused. In *Shaikh Ishaq Vs. State of Bihar* **1995, Cri. L.J., 2682 (S.C.),** the Apex Court has also held that mere acquittal of some of the accused cannot be the reason or foundation to acquit all the accused, specially those against whom substantial material and/or duly corroborated evidence is available.

12. In the present case, the close relationship and/or group rivalry between the two parties, even though, is a two-edged weapon, still in the facts and circumstances of the case, the testimony of these eye witnesses cannot be discarded.

13. The Apex Court in *State of U.P. Vs. M.K. Anthony,* **AIR 1985, S.C., 48,** held that the evidence of the witnesses, if read as a whole, and if it appears to have a ring of truth, then even though there are some discrepancies or some trivial matters, it should not affect the earlier evaluation on the merit of the case, specially when it nowhere touches the core of the case.

14. The recovery of the respective articles at the instance of the

respective appellants-accused, as recorded by the learned Judge also supports the prosecution case in respect of used and stained weapons in question. Those witnesses are PW4 – Datta Jadhav and PW20 – PI Patne. Even if some weapons were recovered from the public place, as contended, still those recoveries of incriminating articles from such places, itself cannot vitiate the whole case of the prosecution. The Apex Court has laid down this law in *State of Himachal Pradesh Vs. Jeet Singh,* **AIR 1999, S.C.W, 982**.

15. In the present case, the evidence of the witness Datta Jadhav and PI Patne have supported the case of the prosecution about the valid recovery of those concealed weapons at the instructions and at the instances of the respective accused. Those articles also were stained with the human blood, as reported in the C.A. Report (Exhibit-118). Merely because no human blood was specified, this evidence cannot be discarded as laid down in *State of Rajasthan Vs. Tejram,* **1999, AIR, S.C.W., 1514.** In the present case, the human blood has been detected also the C.A. Report. All these eye witnesses, as referred above, and the injured witnesses have identified two daggers and *guptis,* which had been used in the commission of the offence. Thus, it connects the weapons with the

offence. Such circumstances provides a valid link in the chain of circumstances and, therefore, the learned Judge has rightly accepted the same. Four swords were also recovered at the instance of accused Dhaklya on 18th March, 1995. Human blood was also found on those swords. There was no plausible explanation, which came from the accused, regarding the possession of the swords with human blood stains on the same. This recovery has been proved by PI Patne and through the Panch witness PW7 - Gurunath Bhoir. PW8 – Prakash Bhoir has also witnessed the recovery of the axe at the instance of the accused Laxman. The same was also supported by PI Patne.

16. PW6 – Waman Tukaram Patil has supported the seizure of the bullock cart at the instance of the accused Jagan near the spot. PW15 – Shivaji Shankar Kamble has also supported the recovery and Panchanama of the clothes of the accused. This witness further stated that there were no injuries on the person of the accused, but their clothes had blood stains. PW 17 - PSI Ravi Anantrao Sardesai has also supported the prosecution case about the seizure of the blood stained clothes on 13th March, 1995, in respect of the accused Jagan, Ramesh, Dilip, Butya, Dhaklya, Shalik and Ambo.

17. The Investigating Officer PI Patne has also supported the prosecution case on all aspects, including the date of the incident to the recovery of the various weapons and clothes in question and receipt of various reports from the C.A. Laboratory.

18. After considering the testimony of the eye witnesses, and the medical witnesses, read with the corroborative evidence and the material placed on the record, we are of the view that the impugned order and judgment is correct. There is no merit in the Appeal, except the case of appellant – Dinesh.

19. It appears from the record that there was a friction in the village and the deceased Babu Patil was one of the member of one group and the other group was headed by Dinesh Bhoir, the appellant-accused. The appellant-accused Dinesh, had not participated in any assault or attack. There is no evidence against him to show that he had actually participated or attacked the deceased or anybody else. Appellant Dinesh was not named in the F.I.R. by the Complainant. Dinesh was sitting in the bullock cart and was shouting. As contended by the appellants' Advocate, there was contradiction about his shouting and that the shouting was also of

different nature, as deposed by the witnesses. The shouting itself cannot be the reason to convict Dinesh under Section 302 IPC. The statement is also made that Dinesh, in fact, is a disabled person. Therefore, considering all the circumstances, including the testimony of all the witnesses, as referred above, it is difficult to accept the case of the prosecution against the appellant Dinesh. However the prosecution's case in respect of all other appellants as referred and as convicted by the learned Judge is within the framework of law, as well as, of the record. We see there is no perversity or there is no reason to interfere with the finding of conviction against the appellants.

20. It appears from the prosecution case and the testimony of the individual witnesses, as referred above, that the appellants had intention to kill the deceased and accordingly, they preplanned and assaulted the deceased to death and caused injuries to others. There is no case made out for any leniency. Therefore, we are maintaining the judgment, including the sentence, as imposed.

21. The Appeal No.654 of 1999 is dismissed. Appeal of all appellants

is dismissed.

22. Appeal No.558 of 1999 is partly allowed. The judgment and Order of conviction under section 302 read with section 149, 147 and 148 of Indian Penal Code is quashed and set aside against Appellant No.19. However, rest of the order is maintained and confirmed.

23. Both the appeals are disposed of accordingly.

**[V.G. PALSHIKAR, J,]**

**[ANOOP V. MOHTA, J.]**